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Shawal bin Senin v Public Prosecutor

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COURT OF APPEAL (PUTRAJAYA) — CRIMINAL APPEAL NO J-05–325–12 OF 2011
ABDUL MALIK ISHAK, LINTON ALBERT AND HAMID SULTAN JJCA
29 APRIL 2014

B

Criminal Procedure — Conviction — Appeal against — Whether conviction safe and did not warrant appellate intervention — Whether trial court came to proper conclusion based on evidence — Whether conduct of accused, strong circumstantial evidence of injury and fact he was alone with victim in house led to irresistible conclusion he caused fatal injuries to victim

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The High Court had sentenced the appellant ('accused') to death after finding him guilty of murdering his eight year old stepson ('the victim'). The evidence showed the victim succumbed to multiple injuries, including brain injury and broken ribs, inflicted on him by the use of various implements over a four day period. The accused's wife, PW8, testified that she had on many previous occasions seen the accused abusing the victim. On the last occasion, the accused had been alone with the victim and PW8 testified that she saw the accused standing near the victim who was lying injured and in pain on a bed having difficulty breathing. PW8 said she wanted to send the victim to hospital but the accused prevented her from doing so and instead told her to keep away a hammer he had used on the victim in a tool box and to clean up the blood stains on the floor of the living room and the wall in the victim's room. A chemist testified at the trial that he found blood stains on several items, including a hammer and a feather duster, recovered from the house. The victim lived in the house with the accused, PW8 and their one year old child. In his petition of appeal against conviction and sentence, the accused contended that he was under the influence of drugs at all material times (this contention was rejected by the trial court for lack of evidence) and that no one actually saw him inflicting the fatal injuries on the victim. There was also an attempt by the accused to blame PW8 for the injuries to the victim.

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Held, dismissing the appeal:

(1) The conduct of the accused, the strong circumstantial evidence of injury and the fact that the accused was most of the time in the house taking care of the child led to the irresistible conclusion that he caused the injuries which resulted in the victim's death (see para 13).

I

(2) On the evidence there was sufficient material to support the charge. The view taken by the trial court on the relevant issues was a reasonable view

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A of the evidence on record and it had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable doubt tests. The trial court's decision was safe, appellate intervention was not warranted and the appeal had no merits (see paras 16 & 17).

B **[Bahasa Malaysia summary**

Mahkamah Tinggi menjatuhkan hukuman mati ke atas perayu (tertuduh) selepas mendapati dia bersalah membunuh anak tiri lelakinya ('mangsa'). Keterangan menunjukkan mangsa meninggal dunia akibat kecederaan berganda, termasuk kecederaan otak dan patah tulang rusuk, dikenakan ke
C atasnya oleh penggunaan pelbagai alat dalam tempoh empat hari. Isteri tertuduh, PW8, memberi keterangan yang dia telah pada beberapa kali melihat tertuduh menganiaya mangsa. Pada kejadian terakhir, tertuduh bersendirian dengan mangsa dan PW8 memberi keterangan bahawa dia melihat tertuduh
D berdiri berhampiran mangsa yang terbaring cedera dan berada dalam kesakitan atas katil mengalami sesak nafas. PW8 menyatakan yang dia hendak menghantar mangsa ke hospital tetapi tertuduh menghalang dia daripada berbuat sedemikian dan sebaliknya menyuruh dia berada jauh daripada penukul yang digunakan ke atas mangsa dalam kotak alat-alat dan
E membersihkan kesan darah di atas lantai ruang tamu dan dinding bilik mangsa. Ahli kimia memberi keterangan di perbicaraan bahawa dia mendapati kesan darah pada beberapa barang, termasuk penukul dan penyapu bulu ayam, yang ditemui dariapda rumah tersebut. Mangsa tinggal di rumah bersama tertuduh, PW8 dan anak mereka yang berumur satu tahun. Dalam petisyen
F rayuan terhadap sabitan dan hukuman, tertuduh berhujah bahawa dia berada di bawah pengaruh dadah pada kesemua masa material (hujahan ini ditolak oleh mahkamah perbicaraan kerana keterangan yang tidak kukuh) dan bahawa tiada siapa pun sebenarnya melihat dia mengenakan kecederaan serius ke atas mangsa. Juga terdapat percubaan oleh tertuduh untuk mempersalahkan PW8
G untuk kecederaan terhadap mangsa.

Diputuskan, menolak rayuan:

(1) Tingkah laku tertuduh, keterangan keadaan kecederaan yang kukuh dan
H fakta bahawa tertuduh pada kesemua masa di dalam rumah menjaga kanak-kanak tersebut membawa kepada kesimpulan yang tidak dapat dipertahankan bahawa dia yang menyebabkan kecederaan yang mengakibatkan kematian mangsa (lihat perenggan 13).

(2) Atas keterangan terhadap material yang mencukupi untuk menyokong
I tuduhan. Pandangan yang diambil oleh mahkamah perbicaraan atas isu-isu yang relevan adalah pandangan munasabah keterangan atas rekod dan ia telah mengikut arahan kes *Radhi* dan mengguna pakai secara betul penilaian maksimum dan ujian melampaui kemungkiran munasabah. Keputusan mahkamah perbicaraan adalah selamat, campur tangan

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mahkamah rayuan tidak wajar dan rayuan tidak bermerit (lihat perenggan 16 & 17).]

Notes

For a case on appeal against, see 5(1) *Mallal's Digest* (4th Ed, 2014 Reissue) para 1820.

Cases referred to

Chin Kek Shen v PP [2013] 5 MLJ 827, CA (refd)
Mohd Radhi bin Yaakob v PP [1991] 3 MLJ 169, SC (folld)
Pramod Mandal v State of Bihar [2004] 4 LRI 24, SC (refd)
PP v Mohd Aszzid Abdullah [2008] 1 MLJ 281, HC (refd)
PP v Thenegaran a/l Murugan [2013] 3 MLJ 328, CA (refd)
Tong Kam Yew & Anor v PP [2013] 4 MLJ 888, CA (refd)

Appeal from: Criminal Trial No 45B-24 of 2009 (High Court, Johor Bahru)

Md Zahar bin Ngah (Muhammad Abd Kadir with him) (Zamri Idrus & Co) for the appellant.
Andi Razalijaya bin A Dadi (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

Hamid Sultan JCA (delivering judgment of the court):

[1] The appellant's appeal against conviction and sentence of death for the murder of his stepson aged eight years came up for hearing on 22–04 of 2013 and upon hearing we dismissed the appeal. My learned brothers Abdul Malik bin Ishak JCA and Linton Albert JCA have read the draft judgment and approved the same. This is our judgment.

[2] The charge against the accused reads as follows:

> Bahawa kamu di antara 24 Disember 2008 jam lebih kurang 9.00 malam hingga 27 Disember 2008 jam lebih kurang 1.00 tengah hari di rumah beralamat 08-04, Blok A, Kondominium Pulai View, Taman Kobena, Tampoi, di dalam daerah Johor Bahru, di dalam Negeri Johor Darul Ta'zim, telah membunuh Siwakorn Sukuntha (No Paspot K-779908) dan dengan itu kamu telah melakukan suatu kesalahan di bawah Seksyen 302 Kanun Keseksaan.

BRIEF FACTS

[3] The facts of the case are straight forward. The accused and his wife ('PW8') were residents of the house. The accused had before the incident on several occasions assaulted the victim inclusive of using a hammer. The victim was injured and was complaining of pain. The last act of the prolonged sad

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episode was the victim lying on the bed having breathing difficulties and the accused was standing next to him. PW8 wanted to send the victim to hospital but the accused stopped her. The accused also instructed PW8 to keep the hammer in the tool box and clean the blood stains on the floor of the living room and the wall in the victim's room. The pathologist had also confirmed that the cause of death was multiple wounds due to non-accidental injuries.

[4] The learned trial judge has written a 35 pages judgment setting out the facts, evidence and conclusion in detail. We do not wish to repeat save to deal with the core issues raised. The petition of appeal, inter alia, reads as follows:

(a) the learned judge erred in making a finding that the appellant had assaulted the victim on multiple occasions:

(i) PW8 only saw the incident on 24 December 2008 and not on 27 December 2008 at 1am and 12 noon, where no one saw the accused abusing the victim;

(ii) no one saw the accused abusing the victim using a hammer, hanger and electrical wire;

(iii) PW8 testified she saw the accused beating the victim with a feather duster and hand, but not constantly; and

(iv) there was no witness who saw the accused inflicting the internal injuries to the victim's brain and broken ribs due to blunt force trauma.

(b) at all material times, the appellant was under the influence of drugs. Thus, his actions were not done intentionally.

[5] The learned counsel before us limited the grounds, inter alia, to two issues namely: (a) wrong finding of facts as to cause of death; (b) injury caused by the accused did not cause the death.

[6] The pathologist ('PW7') who conducted postmortem on the victim and prepared a postmortem report (exh 34) affirmed the cause of death as multiple wounds due to non-accidental injuries using consistent tools inflicted by the accused for a stretch of time from 24 December 2008 to 27 December 2008.

[7] Furthermore, the chemist ('PW6') who conducted examination on samples of several items recovered from the house stated that these several items were tainted with blood stains. The forensic chemist ('PW12') also found stains on the hammer and feather duster.

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[8] There was no other occupant in the house except for the accused, PW8, their one year old baby girl and the victim. No other person had access to the premise.

[9] PW8 had on several occasions, eyewitnessed the accused abusing the victim. And on the last occasion, the accused was alone with the victim.

[10] In the instant case it was the defence case that PW8 was the cause of injury. The mother of the accused DW2 also testified for the defence. However, the learned judge did not accept the defence version.

[11] The learned trial judge had gone through the defence case in detail and the conclusion, inter alia, reads as follows:

> Malangnya dalam kes kita ini pembelaan hanya bergantung kepada keterangan OKT semata-mata dan gagal mengemukakan keterangan berkecuali yang boleh mengesahkan OKT di bawah pengaruh dadah pada tarikh kejadian iaitu 24–27 Disember 2008. Oleh it wajarlah mahkamah ini memutuskan bahawa keterangan OKT sedemikian ditolak penerimaannya.
>
> Jadi pada keseluruhannya mahkamah tidak dapat menerima pembelaan OKT atas alasan-alasan yang dinyatakan di atas dan memakai prinsip dalam kes *Mohd Radhi bin Yaakob v Public Prosecutor* [1991] 3 MLJ 169 dan *Mat v Public Prosecutor* [1963] 1 MLJ 263; [1963] 1 CLJ 82 maka diputuskan pembelaan gagal menimbulkan keraguan munasabah terhadap kes pendakwaan lantas dikatakan pendakwaan berjaya membuktikan kes melampaui keraguan munasabah terhadap OKT.

[12] In the instant case the conduct of the accused, the strong circumstantial evidence of injury and the fact that the accused was most of the time in the house taking care of the child, only lead to irresistible conclusion that he caused the injury which resulted in the death of the victim.

[13] Notwithstanding the learned counsel for the appellant has not taken us through all the grounds stated in the petition of appeal, we have taken the liberty to go through the grounds and the evidence and we are satisfied there is no merits in the appeal.

[14] It is well settled that it is in the hands of the trier of facts to assess the quality of evidence and to determine whether the evidence on record justifies a conviction. In so doing if the court orders an acquittal or conviction it cannot be set aside by the appellate court unless it records a finding that the view taken by the trial court was not a possible reasonable view of the evidence on record (see *Pramod Mandal v State of Bihar* [2004] 4 LRI 24; *Public Prosecutor v Thenegaran a/l Murugan* [2013] 3 MLJ 328).

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[15] We have perused the evidence in detail and we are satisfied that there are sufficient material to support the charge and the view taken by the trial court on the relevant issues in our view was a reasonable view of the evidence on record, and the court had followed *Radhi*'s direction and rightly applied the maximum evaluation and beyond reasonable doubt test, (see *Public Prosecutor v Mohd Aszzid Abdullah* [2008] 1 MLJ 281; *Tong Kam Yew & Wang Wee Cheng v Public Prosecutor* [2013] 4 MLJ 888; *Chin Kek Shen v Public Prosecutor* [2013] 5 MLJ 827).

[16] We are of the considered view it is a safe decision and appellate intervention is not warranted and the appeal has no merit. Accordingly we dismiss the appeal.

[17] We hereby order so.

Appeal dismissed.

Reported by Ashok Kumar